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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

| | |
|---------------------------------|---|
| Agency/Board/Commission: | Department of Labor and Workforce Development |
| Division: | Bureau of Workers' Compensation |
| Contact Person: | Troy Haley |
| Address: | 220 French Landing Dr. 1-B |
| Phone: | 615-532-0179 |
| Email: | troy.haley@tn.gov |

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

| | |
|---------------------|---|
| ADA Contact: | Troy Haley |
| Address: | 220 French Landing Dr. 1-B, Nashville, TN 37243 |
| Phone: | 615-532-0179 |
| Email: | troy.haley@tn.gov |

Hearing Location(s) (for additional locations, copy and paste table)

| | | | | |
|----------------|-------------------------------|---------------------------------------|---------|----------------------------------|
| Address 1: | Tennessee Room | | | |
| Address 2: | 220 French Landing Drive, 1-A | | | |
| City: | Nashville, TN | | | |
| Zip: | 37243 | | | |
| Hearing Date : | 08/29/17 | | | |
| Hearing Time: | 1:30 p.m. | <input checked="" type="checkbox"/> X | CST/CDT | <input type="checkbox"/> EST/EDT |

Additional Hearing Information:

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Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|----------------|---|
| 0800-02-27 | Adjuster and Adjusting Entity Certification Program |
| Rule Number | Rule Title |
| 0800-02-27-.01 | Purpose and Scope |
| 0800-02-27-.02 | Definitions |
| 0800-02-27-.03 | Application and Renewal Fees |

| | |
|----------------|---|
| 0800-02-27-.04 | Certification Process for Adjusters |
| 0800-02-27-.05 | Re-certification Process for Adjusters |
| 0800-02-27-.06 | Loss of Certification for Adjusters |
| 0800-02-27-.07 | Certification Process for Adjusting Entities |
| 0800-02-27-.08 | Re-certification Process for Adjusting Entities |
| 0800-02-27-.09 | Loss of Certification for Adjusting Entities |
| 0800-02-27-.10 | Required Training Programs for Certified Adjusting Entities |
| 0800-02-27-.11 | Civil Penalties |

Rules of the
Bureau of Workers' Compensation

Chapter 0800-02-27
Adjuster and Adjusting Entity Certification Program
New Rules

Rule 0800-02-27.01 Purpose and Scope

- (1) Purpose: The general purposes of this program are to assure that employees sustaining an injury arising out of and in the scope of employment are treated fairly and to assure that workers' compensation claims are handled in an appropriate and uniform manner.
- (2) Scope: This chapter and the rules within apply to all adjusting entities and adjusters subject to the provisions of the Tennessee Workers' Compensation Law that choose to participate in the adjuster certification program.

Authority: T.C.A. § § 50-6-101, 50-6-119, 50-6-127, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.02 Definitions

The terms contained within these rules that are not specifically defined within these rules shall have the same definitions as those established by the Workers' Compensation Act and the case law interpreting it. When any terms that are used in these rules differ from the definition established by the Act, the definition established by the Act shall govern.

- (1) "Adjusting entity" means a trade or professional association, managing general agency, pool, third party administrator and/or insurance company licensed to write workers' compensation insurance in Tennessee and shall also mean a self-insured employer or group self-insured employers possessing a valid certificate of authority from the commissioner of commerce and insurance pursuant to T.C.A §50-6-405.
- (2) "Adjuster" "claims adjuster, "med-only adjuster", or "claims handler" means a representative of an adjusting entity who investigates workers' compensation claims, files or causes claims forms to be filed with the Bureau, commences benefits, and/or makes settlement recommendations based on the insured's liability on behalf of a self-insured employer, trade or professional association, third party administrator, and/or insurance company.
- (3) "Administrator" means the same as the definition of "Administrator in T.C.A §50-6-102.
- (4) "Bureau" means the Tennessee Bureau of Workers' Compensation as defined in Tenn. Code Ann. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only, pursuant to Tenn. Code Ann. § 4-3-1409.
- (5) "Certified adjuster" means an adjuster who has successfully completed the certification requirements for adjusters as determined by the Bureau.
- (6) "Course" means any program of instruction, approved by the Bureau, given to satisfy the certification requirements of this program.

- (7) "Curriculum" means a course of study, approved by the Bureau, which satisfies the certification requirements of this program.
- (8) "Training" means a course of instruction, approved by the Bureau, provided by a training entity that includes the topics specified by the Bureau to meet the initial training requirements of this program.
- (9) "Training Entity" means any person or organization recognized as such by the Bureau for the purpose of providing the adjuster training required by the Bureau.
- (10) "Workers' Compensation Law" means the applicable Tennessee Workers' Compensation Law in effect, pursuant to T.C.A. 50-6-101 et seq.

Authority: T.C.A. §§ 50-6-102, 50-6-233, 50-6-415, and 50-6-419.

Rule 0800-02-27.03 Application and Renewal Fees

- (1) The application fee and renewal fee for adjuster certification and adjusting entity certification shall be posted on the Bureau's website. The appropriate fee to be submitted with the application shall be the fee in effect on the date of the application.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.04 Certification Process for Adjusters

- (1) Prior to being designated as "certified", an adjuster shall:
 - (a) Make proper application, provide all required documentation and pay all appropriate fees;
 - (b) Complete all required curriculum with a training entity in effect at the time of the application;
 - (c) Achieve a passing score, as determined by the Bureau, on all final examinations; and
 - (d) Be approved by and designated as such by the Bureau.
- (2) No adjuster can take any examination unless that person has attended all required instruction required for that examination.
- (3) An adjuster, not successful in passing the examination and wishing to take the examination again, must apply, pay all appropriate fees and participate in all required instructions, as though for an initial application, prior to re-taking the examination.
- (4) The length of term for a certification designation is twenty-four (24) months from the date of designation.
- (5) An adjusting entity shall not allow an individual who has not been so designated by the Bureau to act as a certified adjuster of Tennessee workers' compensation claims.
- (6) There shall be no reciprocity granted based on certification or licensure achieved in another state's program.
- (7) Adjusters designated as certified by this program shall be able to indicate his/her achievement on a résumé and job application only during the time frame the adjuster is so recognized.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.05 Re-certification Process for Adjusters

- (1) Prior to becoming re-certified, an adjuster shall have achieved an initial certified adjuster designation and shall complete the curriculum required for re-certification at the time of the renewal application.
- (2) Re-certification training, including achieving a passing score on the final examination, shall be completed with the Training Entity prior to an adjuster being designated as a certified adjuster.
- (3) The length of term for a re-certification designation is twenty-four (24) months from the date of designation.
- (4) A certified adjuster shall not be required to be re-trained and re-designated in order to adjust claims for a different insurer, self-insured employer or third-party administrator during the period of time in which their personal certification remains current and valid.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.06 Loss of Certification for Adjusters

- (1) The Administrator may revoke or refuse to renew an adjuster's previously granted certification permanently or temporarily based upon any of the following grounds:
 - (a) Failure of a certified adjuster to fulfill the requirements for re-certification prior to the end of the term of certification;
 - (b) Misrepresentation on the certification application, as determined by the Administrator; or,
 - (c) Refusal or substantial failure to comply with the provisions of these Rules.
- (2) Any adjuster losing certification shall be sent, via USPS to their last known address, a Notice of Removal by the Bureau stating the reasons for having lost the certification status. Such mailing constitutes notice.
- (3) An adjuster shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjuster to submit a timely response to the Notice of Removal shall result in the closure of the appeal.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.07 Certification Process for Adjusting Entities

- (1) Prior to being designated a "certified" adjusting entity an entity shall:
 - (a) Make proper application, provide all required documentation and pay all appropriate fees.
 - (b) Establish and implement a training program that complies with the requirements set forth in these Rules for adjusters that process Tennessee claims.
 - i. Verifiable training provided by the adjusting entity to its adjusters that was provided within twelve (12) months of an adjusting entity's initial application that meets the requirements stated within these Rules may be used to satisfy the requirements of this section.
 - (c) For the cumulative twelve (12) calendar months prior to application, meet or exceed the requirements of the Bureau's Rules Claims Handling Standards, Rules 0800-02-14 and General Rules, Rules 0800-02-01, and the Medical Fee Schedule, Rules 0800-02-.17-20 in the timely filing/provision of:
 - i. First Report of Work Injury Forms
 - ii. Employee Choice of Physician Forms

- iii. First Report of Payment of Compensation Forms
 - iv. Notice of Change or Termination of Compensation Benefits Forms
 - v. Statistical Data Forms
 - vi. Payment(s) to medical providers
- (d) Have at least 60% of its adjusters that process Tennessee workers' compensation claims be recognized as "certified" by the Bureau.
 - (e) Have at least 75% of its supervisors that supervise adjusters that process Tennessee workers' compensation claims be recognized as "certified" by the Bureau, and
 - (f) Be approved by and recognized as such by the Bureau.
- (2) Documentation submitted with the application shall include:
- (a) The individual names and total number of persons adjusting Tennessee workers' compensation claims, including claims supervisors, on behalf of the applicant on the date of the application;
 - (b) The total number of adjusters and medical-only adjusters who have been awarded a Tennessee Adjuster Certification as of the date of the application;
 - (c) An audit of the adjusting entity's achievements relative to the benchmarks listed above for the twelve (12) calendar months ending with the month three months prior to the date of the application (example: For an application dated June 1, the audit would be for the months of April 1 of the previous year through March 31 of the current year).
- (3) The term for a certification designation is twelve (12) months from the date of designation.
- (4) Failure of a certified adjusting entity to fulfill the requirements for post-designation training shall result in that entity being no longer considered a certified adjusting entity.
- (5) An adjusting entity which is not designated by the Bureau to be a certified adjusting entity shall not identify itself as holding such recognition.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.08 Re-Certification Process for Adjusting Entities

- (1) Prior to becoming re-certified, an adjusting entity shall have achieved an initial Certified adjusting entity designation, submit a completed renewal application with all appropriate fees and shall meet the requirements of Rule 0800-02-XX.07 above at the time of the renewal application.
- (2) The length of term for a re-certification designation is twenty-four (24) months from the date of designation.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.09 Loss of Certification for Adjusting Entities

- (4) The Administrator may revoke or refuse to renew an adjusting entity's previously granted certification permanently or temporarily based upon any of the following grounds:
 - (a) Failure of a certified adjusting entity to fulfill the requirements for re-certification prior to the end of the term of certification;

- (b) Misrepresentation on the certification application, as determined by the Administrator; or,
 - (c) Refusal or substantial failure to comply with the provisions of these Rules.
- (5) Any adjusting entity losing certification shall be sent, via USPS to their last known address, a Notice of Removal by the Bureau stating the reasons for having lost the certification status. Such mailing constitutes notice.
- (6) An adjusting entity shall have thirty (30) calendar days from the date the Notice of Removal is sent in which to appeal by responding in writing to the removal and to submit any responsive supporting documentation to the Bureau for consideration. Failure of an adjusting to submit a timely response to the Notice of Removal shall result in the closure of the appeal.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27,10 Required Training Program for Certified Adjusting Entities

- (1) Prior to being recognized as a certified adjusting entity by the Bureau, an adjusting entity shall establish and implement a training program for adjusters that process Tennessee claims and shall provide:
 - (a) Newly-hired medical-only adjusters with at least eight (8) hours of claims-related training;
 - (b) Newly-hired or newly-appointed claims adjusters with at least 12 hours of claims-related training;
 - (c) Medical-only and claims adjusters, who are not newly-hired or newly-appointed, with at least two (2) hours of Tennessee-specific training each year; and
 - (d) Supervising Adjusters who are not newly-hired or newly-appointed with at least four (4) hours of Tennessee-specific claims processing training each year.
- (2) At least 50% of those training hours shall be conducted in-person with an instructor or by a Tennessee-licensed attorney. Any training not conducted in-person may be done on-the-job under the supervision of an instructor or a Tennessee-Certified adjuster or through any other appropriate method.
- (3) All required training for new hires or newly-appointed adjusters shall be provided within the first thirty (30) calendar days of the date of hire or appointment to the position and shall include:
 - a. Overview of the information contained on the Tennessee Bureau of Workers' Compensation's Internet homepage
 - b. Overview of the Tennessee Workers' Compensation Act including:
 - i. Notice requirements for employers and claimants
 - ii. Adjuster duties when an injury is reported by an employer
 - iii. Time frame for accepting/denying claim
 - iv. Elements of good faith
 - v. Claims forms filing requirements/EDI
 - vi. Exclusive remedy
 - c. Insurance principles of compensation
 - i. Medical evidence
 - ii. Investigations
 - iii. Documentation
 - iv. Tennessee-specific Compensability Issues
 - 1. Course of employment/Arising out of employment

- 2. Covered injuries
 - 3. Occupational diseases
 - v. Denying a claim
 - 1. Willful misconduct
 - 2. Intoxication
 - 3. Failure to use safety equipment
 - 4. Statute of limitations
 - vi. Fraud
 - d. Medical billing codes
 - e. Benefits provisions
 - i. Tennessee requirements for medical panels
 - ii. Medical benefits
 - iii. Temporary disability benefits
 - iv. Permanent disability benefits and issues concerning impairment ratings
 - v. Future medical benefits
 - vi. Death benefits
 - f. Return to work and vocational rehab
 - g. Cumulative trauma and gradually occurring injuries
 - h. Medical terminology and abbreviations
 - i. Medical reports
 - ii. Medical specialties
 - iii. Common occupational injuries and diseases
 - iv. Common medical tests
 - i. Controlling Costs
 - i. Employee Choice of Physician Form C-41
 - ii. Medical Fee Schedule
 - iii. Case Management
 - iv. Utilization Review
 - v. Treatment Guidelines and Drug Formulary
 - j. Settlement negotiations
 - i. Mediation and Ombudsman Services of Tennessee (MOST)
 - ii. Court of Workers' Compensation Claims
 - iii. Workers' Compensation Appeals Board
 - k. Ethical Issues
 - i. Elements of bad faith
 - ii. Tennessee's Penalty statutes
- (4) All required training for medical-only and claims adjusters and Supervisors, who are not newly-hired or newly-appointed, shall include information regarding industry best practices as well as any updates to the Act or to the Bureau's rules and/or programming areas.
- (5) Adjusting entities recognized by this program shall be allowed to indicate its claims processing services are "Recognized by the Tennessee Bureau of Workers' Compensation as a certified adjusting entity in advertising and on its letterhead only during the time frame the adjusting entity is so recognized."

- (6) The Bureau may, at its discretion, provide the names and other non-protected personal information, of any adjuster or adjusting entity that has been certified by this program on its website or in any other means it chooses.

Authority: T.C.A. § 50-6-419.

Rule 0800-02-27.11 Civil Penalties

In addition to other fees provided by applicable law and regulation, violations of any of these rules shall be subject to enforcement by the Administrator pursuant to TCA §50-6-419.

Authority: T.C.A. § 50-6-419.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State